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United States General Accounting Office
Washington, DC 20548

Office of
General Counsel

In Reply,
Refer to B-195268

April 24, 1980

The Honorable Clement J. Zablocki,
House of Representatives

Dear Mr. Zablocki:

We refer to your interest in the protest of Bell Helicopter Textron against the contract awarded to Aerospatiale Helicopter Corporation by the Department of Transportation, United States Coast Guard.

Enclosed is a copy of our decision of December 21, 1979, denying the protest of Bell Helicopter Textron.

Because we determined in the decision that the airframe included in the AHC helicopter is manufactured in France, and DOT indicated that the cost of the airframe constitutes more than 50 percent of the cost of all the other components, we disagreed with DOT that the helicopter is a domestic product for Buy American Act purposes and concluded that it is foreign. However, we found that, even if the differential required to be applied to the AHC cost proposal by the implementation of that act were used, it would not change AHC's standing as the successful offeror. This is because, even though the addition of the differential to AHC's cost proposal for cost evaluation purposes made it higher than Bell's cost proposal, the technical advantage in AHC's proposal under the evaluation procedure provided in the request for proposals outweighed the cost advantage.

Aside from the Buy American Act issue, Bell contended that the helicopter offered by AHC was not a direct derivative of the helicopter which AHC offered for flight testing. In that connection, the RFP had a requirement that the offered helicopter be directly derived from the flight-tested helicopter. We denied this basis for the protest because we found that the provision in which the requirement is included when read as a whole intended that the flight-tested aircraft have the potential to meet the agency's mission and performance requirements and DOT determined that the flight-tested helicopter had that potential.



Further, Bell disagreed with DOT's evaluation of the technical proposals submitted by Bell and AHC. We reviewed Bell's various objections, but were unable to find for Bell because it was not apparent that DOT had acted unreasonably.

Bell contended that DOT had no reasonable basis to determine AHC was a responsible prospective contractor. However, the review of responsibility determinations generally is limited by our Office and the courts to situations where fraud is involved. Since all that was involved in this case was a difference of opinion between Bell and DOT as to whether AHC is a responsible contractor, Bell failed to meet the standard for review.

Finally, Bell contended that the economic price adjustment clauses in AHC's contract based on domestic price indexes when some of the costs of performance will be incurred in France would be improper, because they might produce a windfall or inadequately protect AHC if the French economy behaved different than the domestic economy. We found that Bell would be in no different position than AHC if Bell were the contractor with the same escalation clause, because the clause provides for a price adjustment for changes in the economy without regard for the actual cost a contractor experiences in performing the contract. We noted that the application of a consistent factor to both offerors means that the lower offeror will remain low during the term of the contract, since both offers will vary by the same proportion. Thus, we found it is irrelevant that the price adjustment percentages are to be based on domestic factors.

Sincerely yours,

Milton J. Socolar
for Milton J. Socolar
General Counsel

Enclosure